IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Leon Benhamou, et al.
For	:	METHOD AND APPARATUS FOR SECURING NETWORK MANAGEMENT COMMUNICATIONS
Serial No.	:	10/695,952
Filed	:	October 30, 2003
Art Unit	:	2442
Examiner	:	Faruk Hamza
Att. Docket	:	ALC 3450
Confirmation No.	:	6257

APPEAL BRIEF

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P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed herewith.

I. REAL PARTY IN INTEREST

The party in interest is Alcatel-Lucent, by way of an Assignment recorded at Reel 014670, frame 0770.

II. RELATED APPEALS AND INTERFERENCES

Following are identified any prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal:

NONE.

III. STATUS OF CLAIMS

Claims 1-20 are on appeal, pending, and rejected.

No claims are canceled, withdrawn, or allowed.

IV. STATUS OF AMENDMENTS

All amendments have been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary refers to the specification of the present application by paragraph numbers and line numbers.

The subject matter recited in independent claim 1 includes: "A method of providing secure network management communications within a communication network [Fig. 1: 10; page 4, line 24], the communication network [Fig. 1: 10; page 4, line 24] including a plurality of network elements [Fig. 1: 12/14; page 5, line 2] wherein each network element [Fig. 1: 12/14; page 5, line 2] generates and processes legacy network management messages in conformance with a legacy management system, the method comprising: embedding a first legacy network management message within a first Simple Network Management Protocol (SNMP) message at a first network element; transmitting the first SNMP message over the network [Fig. 1: 10; page 4, line 24] to a second network element; extracting the first legacy network management message from the first SNMP message at the second network element; and transmitting the extracted first legacy network management message to a legacy agent [Fig. 1: 24; page 5, line 11]."

The subject matter recited in independent claim 9 includes: "A network management system within a communication network [Fig. 1: 10; page 4, line 24], the communication network [Fig. 1: 10; page 4, line 24] including a management station [Fig. 1: 12; page 4, line 24] and a node [Fig. 1: 14; page 4, line 25], comprising: a legacy interface at the management station [Fig. 1: 12; page 4, line

24] that generates a first legacy network management message in conformance with a legacy network management protocol; a Simple Network Management Protocol (SNMP) initiator [Fig. 1: 28; page 5, line 23] at the management station [Fig. 1: 12; page 4, line 24] that embeds the first legacy network management message within a first SNMP message and transmits the first SNMP message to the node [Fig. 1: 14; page 4, line 25]; an SNMP agent [Fig. 1: 32; page 5, line 28] at the node [Fig. 1: 14; page 4, line 25] that receives the first SNMP message and for extracting the first legacy network management message from the first SNMP message; and a legacy agent [Fig. 1: 24; page 5, line 11] at the node [Fig. 1: 14; page 4, line 25] that processes the extracted first legacy network management message in conformance with the legacy network management protocol."

The subject matter recited in independent claim 13 includes: "A Simple Network Management Protocol (SNMP) initiator [Fig. 1: 28; page 5, line 23] at a management station [Fig. 1: 12; page 4, line 24] within a communication network [Fig. 1: 10; page 4, line 24], the SNMP initiator [Fig. 1: 28; page 5, line 23] comprising: instructions for receiving a legacy network management message which conforms to a legacy network management protocol; instructions for embedding the received legacy network management message within an SNMP message; instructions for transmitting the SNMP message to a node [Fig. 1: 14; page 4, line 25] within the communication network [Fig. 1: 10; page 4, line 24]; instructions for extracting the legacy network management message from the SNMP message; and

instructions for transmitting the extracted legacy network management message to a legacy agent [Fig. 1: 24; page 5, line 11]."

The subject matter recited in independent claim 15 includes: "A Simple Network Management Protocol (SNMP) agent [Fig. 1: 32; page 5, line 28] at a node [Fig. 1: 14; page 4, line 25] within a communication network [Fig. 1: 10; page 4, line 24], the SNMP agent [Fig. 1: 32; page 5, line 28] comprising: instructions for receiving a first SNMP message from a management station [Fig. 1: 12; page 4, line 24] within a communication network [Fig. 1: 10; page 4, line 24]; instructions for extracting a first legacy network management message from the received first SNMP message, the first legacy network management message conforming to a legacy network management protocol; and instructions for sending the extracted first legacy network management message to a legacy agent [Fig. 1: 24; page 5, line 11] at the node [Fig. 1: 14; page 4, line 25]."

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are presented for review:

A. On pages 2-8, the Office Action rejects claims 1, 2, 4-10, and 12-20 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,697,845 to Andrews (hereinafter "Andrews").

B. On pages 8 and 9, the Office Action rejects claims 3 and 11 under 35 U.S.C. § 103(a) as allegedly unpatentable over Andrews in view of Official Notice.

VII. ARGUMENT

A. Anticipation Rejections of Claims 1, 2, 4-10, and 12-20

On pages 2-8, the Office Action rejects claims 1, 2, 4-10, and 12-20 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,697,845 to Andrews (hereinafter "Andrews").

1. Independent Claims 1, 9, 13, and 15

Claim 1 recites "transmitting the extracted first legacy network management message to a legacy agent" (emphasis added). Similar subject matter appears in claims 9, 13, and 15. Appellant respectfully submits that Andrews does not disclose, suggest, or teach this subject matter.

On page 3, the Office Action relies upon lines 30-35 of col. 3 and lines 29-30 of col. 7 in Andrews. In particular, the Office Action alleges that Andrews discloses this subject matter by "forwarding the message to a peer agent at the node." On page 10, the Examiner further alleges that the claim language "failed to define or provide any details of [sic] legacy agent" and declares that the rejections are "broadly interpreting the SNMP peer agent to be the legacy agent."

As set forth in M.P.E.P. § 2111, "during patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." See *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). In addition, the "broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach." See *In*

re Cortright, 165 F.3d 1353, 1359 (Fed. Cir. 1999). In this case, Appellant respectfully submits that interpreting a peer agent to be a legacy agent is both inconsistent with the specification and a reasonable interpretation of the claim language that would be reached by one of ordinary skill in the art.

Regarding the specification, paragraph [0015] of the published version defines as legacy network management system as "any network management system capable of exchanging legacy network management messages between network elements in accordance with a legacy management protocol." Each node includes a legacy agent that "has the ability to respond" to "legacy network management messages." Because the peer agent of Andrews cannot exchange legacy network management messages, it would be unreasonable to interpret the peer agent of Andrews as equivalent to the recited legacy agent.

As set forth in M.P.E.P. § 2143.03, "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). In this case, Appellant respectfully submits that the Office Action has failed to consider the words related to legacy network management messages. While the Examiner alleges that the Office Action is "broadly interpreting the SNMP peer agent" of Andrews to be equivalent to the claimed legacy agent, the Office Action lacks any analysis of the claim language related to legacy network management messages. Moreover, the Office Action ignores recited language in system claim 9, as enumerated below.

First, independent claim 9 recites "a legacy interface at the management station that generates a first legacy network management message in conformance with a legacy network management protocol" (emphasis added). While page 5 of the Office Action rejects claim 9, it fails to address the recited legacy interface.

Second, claim 9 recites "an SNMP agent at the node that receives the first SNMP message and for extracting the first legacy network management message from the first SNMP message" (emphasis added). While page 5 of the Office Action rejects claim 9, it fails to address the recited SNMP agent.

Third, claim 9 recites "a legacy agent at the node that processes the extracted first legacy network management message in conformance with the legacy network management protocol" (emphasis added). While page 5 of the Office Action rejects claim 9, it fails to address the recited legacy agent.

For the reasons listed above, Appellant respectfully submits that claims 1, 9, 13, and 15 are allowable over Andrews and requests withdrawal of the rejections of independent claims 1, 9, 13, and 15.

2. Dependent Claims 2, 4-8, 10, 12, 14, and 16-20

Claims 2, 4-8, and 19 depend from claim 1. Claims 10, 12, and 20 depend from claim 9. Claim 14 depends from claim 13. Claims 16-18 depend from claim 15.

Thus, claims 2, 4-8, 10, 12, 14, and 16-20 are allowable at least due to their respective dependencies from allowable base claims. Accordingly, Appellant respectfully requests withdrawal of the rejections of claims 2, 4-8, 10, 12, 14, and 16-20.

B. Obviousness Rejections of Claims 3 and 11

On pages 8 and 9, the Office Action rejects claims 3 and 11 under 35 U.S.C. § 103(a) as allegedly unpatentable over Andrews in view of Official Notice.

As set forth in M.P.E.P. § 2144.03, the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute." See *In re Knapp Monarch Co.*, 296 F.2d 230 (CCPA 1961)). Here, the Examiner takes official notice without providing such evidence.

As further set forth in M.P.E.P. § 2144.03, it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. See *In re Zurko*, 258 F.3d 1379, 1385 (Fed. Cir. 2001). Here, we note that the Office Action solely relies upon "upgrading" Andrews without addressing the recited subject matter of legacy network management messages, subject matter that Andrews lacks.

Claim 3 depends from claim 1. Claim 11 depends from claim 9. Thus, claims 3 and 11 are also allowable due to their respective dependencies from allowable base claims. Accordingly, Appellant respectfully requests withdrawal of the rejections of claims 3 and 11.

CONCLUSION

For at least the reasons discussed above, Appellant respectfully submits that the rejections are in error and that claims 1-20 are in condition for allowance. Therefore, Appellant respectfully requests that this Honorable Board reverse the rejections of claims 1-20.

Respectfully submitted,
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/Eric J. Nuss/

Date: February 22, 2012

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VIII. CLAIMS APPENDIX

CLAIMS INVOLVED IN THE APPEAL:

1. (Rejected) A method of providing secure network management communications within a communication network, the communication network including a plurality of network elements wherein each network element generates and processes legacy network management messages in conformance with a legacy management system, the method comprising:

embedding a first legacy network management message within a first Simple Network Management Protocol (SNMP) message at a first network element;

transmitting the first SNMP message over the network to a second network element;

extracting the first legacy network management message from the first SNMP message at the second network element; and

transmitting the extracted first legacy network management message to a legacy agent.

2. (Rejected) The method of claim 1, further comprising:

transmitting the first SNMP message in conformance with a secure version of the SNMP.

3. (Rejected) The method of claim 2, further comprising:

transmitting the first SNMP message in conformance with SNMP version 3 (SNMPv3).

4. (Rejected) The method of claim 1, wherein the legacy management system provides less security than the SNMP.

5. (Rejected) The method of claim 1, further comprising:

generating the first legacy network management message at the first network element; and

processing the generated first legacy network management message at the second network element.

6. (Rejected) The method of claim 5, further comprising:

generating a second legacy network management message at the second network element in response to the first legacy network management message;

embedding the generated second legacy network management message within a second SNMP message at the second network element;

transmitting the second SNMP message over the network to the first network element;

extracting the second legacy network management message from the second SNMP message at the first network element; and

transmitting the extracted second legacy network management message to a legacy agent.

7. (Rejected) The method of claim 1, wherein the first network element is a management station and the second network element is a node.

8. (Rejected) The method of claim 1, wherein the first network element is a node and the second network element is a management station.

9. (Rejected) A network management system within a communication network, the communication network including a management station and a node, comprising:

a legacy interface at the management station that generates a first legacy network management message in conformance with a legacy network management protocol;

a Simple Network Management Protocol (SNMP) initiator at the management station that embeds the first legacy network management message within a first SNMP message and transmits the first SNMP message to the node;

an SNMP agent at the node that receives the first SNMP message and for extracting the first legacy network management message from the first SNMP message; and

a legacy agent at the node that processes the extracted first legacy network management message in conformance with the legacy network management protocol.

10. (Rejected) The network management system of claim 9, wherein the SNMP initiator transmits the first SNMP message in conformance with a secure version of the SNMP.

11. (Rejected) The network management system of claim 10, wherein the SNMP initiator transmits the first SNMP message in conformance with SNMP version 3 (SNMPv3).

12. (Rejected) The network management system of claim 9, wherein the legacy network management protocol provides less security than the SNMP.

13. (Rejected) A Simple Network Management Protocol (SNMP) initiator at a management station within a communication network, the SNMP initiator comprising:

instructions for receiving a legacy network management message which conforms to a legacy network management protocol;

instructions for embedding the received legacy network management message within an SNMP message;

instructions for transmitting the SNMP message to a node within the communication network;

instructions for extracting the legacy network management message from the SNMP message; and

instructions for transmitting the extracted legacy network management message to a legacy agent.

14. (Rejected) The SNMP initiator of claim 13, wherein the legacy network management protocol provides less security than the SNMP.

15. (Rejected) A Simple Network Management Protocol (SNMP) agent at a node within a communication network, the SNMP agent comprising:

instructions for receiving a first SNMP message from a management station within a communication network;

instructions for extracting a first legacy network management message from the received first SNMP message, the first legacy network management message conforming to a legacy network management protocol; and

instructions for sending the extracted first legacy network management message to a legacy agent at the node.

16. (Rejected) The SNMP agent of claim 15, wherein the legacy network management protocol provides less security than the SNMP.

17. (Rejected) The SNMP agent of claim 15, further comprising:

instructions for receiving a second legacy network management message from the legacy agent;

instructions for embedding the received second legacy network management message within a second SNMP message; and

instructions for transmitting the second SNMP message to the management station.

18. (Rejected) The SNMP agent of claim 17, wherein the legacy network management protocol provides less security than the SNMP.

19. (Rejected) The method of claim 1, further comprising:

passing an unsolicited legacy network management message from the legacy agent to a SNMP agent.

20. (Rejected) The network management system of claim 9, wherein the legacy agent passes an unsolicited legacy network management message to the SNMP agent.

IX. EVIDENCE APPENDIX

A copy of the following evidence 1) entered by the Examiner, including a statement setting forth where in the record the evidence was entered by the Examiner, 2) relied upon by the Appellant in the appeal, and/or 3) relied upon by the Examiner as to the grounds of rejection to be reviewed on appeal, is attached:

NONE.

X. RELATED PROCEEDINGS APPENDIX

Copies of relevant decisions in prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal are attached:

NONE.